IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA.

RFA NO.204 of 1999

Judgment Reserved on: 11.10. 2007

Date of Decision: 22.11.2007

Smt. Surender Kaur & Ors. ……Appellants

Versus

State of H.P.& Ors. ` ……. Respondents.

Coram

The Hon'ble Mr. Justice Kuldip Singh,Judge

Whether approved for reporting? No

For the Appellants : Mr. Vinod Gupta, Advocate.

For the respondents : Mr. Shrawan Dogra, Advocate.

Kuldip Singh, J

1. This appeal has been directed against the award dated 13.5.1999 passed by learned District Judge, Solan in Land Reference No.67-S/4 of 1990, whereby learned District Judge has assessed the market value of the acquired land at Rs.1,10,400/- per bigha and on this amount has allowed other statutory amounts and interest.

2. The facts in brief are that a notification under Section 4 of the Land Acquisition Act, 1894 (for short "Act") was issued on 7.9.1987 for acquiring land measuring 0-18-63 hectares (2-10 Bighas) for construction of Rest House of Himachal Pradesh State Electricity Board. The land Acquisition Collector (for short "Collector") vide award dated 21.7.1989

Whether the reporters of the local papers may be allowed to see the Judgment? **Yes**

has assessed the market value of the acquired land at the rate of Rs.60,000/- per bigha and on this amount he has allowed other statutory amounts and interest. The land owners were aggrieved against the award dated 21.7.1989 of the collector, they filed reference petition under Section 18 of the Act and claimed market value of the acquired land at the rate of Rs.5,00,000/- per bigha. The learned District Judge vide award dated 5.8.1991 has assessed the market value of the acquired land at the rate of Rs.1,33,500/- per bigha. The learned District Judge has also awarded other statutory amounts and interest to the land owners vide award dated 5.8.1991. The RFA No. 355 of 1991 was filed in this Court against the award dated 5.8.1991 which was allowed on 17.8.1998 and the case was remanded to the learned District Judge for afresh decision after giving opportunity to the parties to produce further evidence. The learned District Judge after remand of the case decided the reference petition vide award dated 13.5.1999 and assessed the market value of the acquired land at Rs.1,10,400/- per bigha. On this amount, the learned District Judge has allowed other statutory amounts and interest. The land owners are in appeal against the award dated 13.5.1999.

3. I have heard Mr. Vinod Gupta, learned counsel for the appellants and Mr. Shrawan Dogra, learned counsel for the respondents. The learned counsel for the appellants has submitted that the learned Reference Court has erred in assessing the market value of the acquired land on the basis of award dated 20.5.1987 as in that case notification under Section 4 of the Act was issued on 21.5.1980 whereas in the present case, the notification under Section 4 of the Act was issued on 7.9.1987 . The evidence has not been properly appreciated on record and according to him the market value of the acquired land is not less than Rs.2,00,000/- lacs per bigha. The learned counsel for the respondents has supported the impugned award .

4. PW-1 Smt. Surender Kaur has stated that acquired land is within the municipal limit. The respondents had taken possession of the acquired land

25 years ago and when land was acquired it was within municipal limit. The plot is straight. At the time of acquisition market value of 2-7 bighas was Rs.10 lacs, adjacent to the plot is the Electricity Board Colony, Power House, road, other residential houses and shops. In this area one bigha is of 862 square meters. In cross-examination she has denied that this area came in municipal limits in the year 1989. She has admitted her statement Ex.PW-1/A.

5. PW-2 Sushil Kumar, Property Dealer has stated that in October, 1986, 60 square meters land was sold to Ram Lal for Rs.25,000/- through sale deed Ex.PA. In cross examination he has stated that from this land office of HPSEB is at a distance of one furlong.

6. PW-3 Jagdish Chand has stated that he and his brother had sold two plots. One plot of 89 square meters for Rs.30,000/- and another 154 square meters for Rs.49,000/- through sale deeds Ex.PB and Ex.PC. In cross-examination he has stated that office of HPSEB from the sold land is one furlong.

7. RW-1 Smt. Kamni Devi, Registration Clerk has placed on record sale deeds Ex.RW-1 /D dated 23.6.1987, sale deed dated 28.4.1986 Ex.RW-1/E, sale deed dated 6.6.1986 Ex.RW-1/F, sale deed dated 26.5.1987 Ex.RW-1/G. RW-2 Puran Chand has stated that as Power of Attorney holder of his mother he sold 1008 square meters land through sale deed Ex.RW-1/G to Jiwan for Rs.3000/-. In cross-examination he has stated that this land is situated in village Kaleen which is at a distance of one kilometer from the Power House. RW-3 Smt. Amita Mahajan has stated that in June 1987 she sold 26 square meters land to Ramji Lal Sehgal for Rs.200/- through sale deed Ex.RW-1/D. In cross-examination she has stated that this land does not touch National Highway and is towards bye-pass at a distance of one kilometer.

8. The notification under Section 4 of the Act was issued on 7.9.1987. The learned District Judge has assessed the market value of the acquired land on the basis of award dated 20.5.1987 Ex.RW-1/B. The perusal of award

Ex.RW-1/B would show that for acquiring land covered by award Ex.RW/1/B notification under Section 4 was issued on 21.5.1980. In the present case the notification under Section 4 of the Act was issued on 7.9.1987. Therefore, the learned District Judge has erred in a relying award Ex.RW-1/B for assessing the market value of the acquired land. The sale deeds proximate in time to the notification under Section 4 of the Act are Ex.PB dated 11.5.1987 and Ex.PC dated 28.8.1987. The learned District Judge has held that as per sale deed Ex.PB the rate comes to Rs. 2,,85,000/- per bigha and as per sale deed Ex.PC rate comes to Rs. 2,69,500/- per bigha. These sale deeds are of plots which are near to the acquired land.

9. The respondents have placed on record sale deeds Ex.RW-1/D to Ex.RW-1/F. RW-2 Puran Chand has stated that as Power of Attorney holder of his mother he sold land covered by sale deed Ex.RW-1/G. RW-3 Amita Mahajan is the vendor of sale deed Ex.RW-1/D, but the respondents have not placed any material on record for assessing the market value of the acquired land. On simple production of sale deeds Ex.RW-1/D to Ex.RW-1/F acquired land cannot be compared with the lands covered by these sale deeds. The respondents have led no evidence of comparison of acquired land with sale instances In these circumstances sale deeds Ex.RW-1/D to Ex.RW-1/F can not be relied for assessing the market value of the acquired land.

10. The sale deeds Ex.PB and Ex.PC are of small areas. The acquired land is 2 bighas and 10 biswas but still sale deeds Ex.PB and Ex.PC though of small areas can be relied for assessing the market value of the acquired land after applying appropriate deduction. As noticed above, the rate of land as per sale deed Ex.PB comes to Rs. 2,85,000/- per bigha and as per sale deed Ex.PC it comes to Rs. 2,69,500/- per bigha. The average rate of these two sale deeds comes to Rs. 2,77,250/- per bigha.

11. In ***H.P. Housing Board vs. Bharat S. Negi and others (2004) 2 Supreme Court Cases 184*** the Supreme Court has allowed 33 1/3% deduction

towards development cost when comparable sales of smaller lands were taken into account for assessing the market value of large piece of land. In view of ***H.P. Housing Board*** case (supra) after applying 33% deduction the market value of the acquired land comes to Rs.1,84,833/- per bighas on the date of notification under Section 4 of the Act. The impugned award thus requires modification.

12. The result of the above discussion, the appeal is allowed, award dated 13.5.1999 passed by learned District Judge, Solan in Land Reference No.67-S/4 of 1990 is modified, the market value of the acquired land is held Rs.1,84,833/- per bigha, the appellants under Section 23(1-A) of the Act are also entitled to amount at the rate of 12% per annum on market value from the date of publication of notification, under Section 4 of the Act i.e. 7.9.1987 to the date of award of the Collector i.e. 21.7.1989. The appellants are further entitled to compulsory acquisition charges at the rate of 30% on the market value of the acquired land and interest for one year at the rate of 9% per annum on the excess compensation from 7.9.1987 to 7.9.1988 and thereafter at the rate of 15% per annum till payment. No costs.

(Kuldip Singh)
Judge

November 22, 2007
(sks)